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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 849

**GREAT LAKES DREDGE & DOCK COMPANY, ET AL.,
PETITIONERS,**

**PHILIP J. CHARLET, ADMINISTRATOR, DIVISION
OF EMPLOYMENT SECURITY, LOUISIANA DE-
PARTMENT OF LABOR, ETC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED MARCH 22, 1943.

CERTIORARI GRANTED APRIL 8, 1943.

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**UNITED STATES OF AMERICA, DISTRICT COURT OF
THE UNITED STATES, EASTERN DISTRICT OF
LOUISIANA, NEW ORLEANS DIVISION.**

GREAT LAKES DREDGE & DOCK COMPANY, ET AL.

versus No. 435 (Civil Action).

PHILIP J. CHARLET, etc.

Appearances:

**Messrs. Deutsch & Kerrigan (Eberhard P. Deutsch),
Ryan, Condon & Livingston, Attorneys for Plain-
tiffs-Appellants.**

**Messrs. W. C. Perrault, Asst. Atty. Gen., Aubrey B.
Hirsch, General Counsel, Division of Employment
Security, etc., Attorneys for Defendant-Appellee.**

**APPEAL from the District Court of the United States for
the Eastern District of Louisiana, to the United States
Circuit Court of Appeals for the Fifth Circuit, re-
turnable within forty (40) days from the 24th day
of March, 1942, at the City of New Orleans, Lou-
isiana.**

PETITION.

Filed August 22, 1940.

(Number and Title Omitted.)

To the Honorables, the Judges of the District Court of the United States in and for the Eastern District of Louisiana:

The complaint of Great Lakes Dredge & Dock Company, Jahncke Service, Inc., McWilliams Dredging Company, Standard Dredging Corporation (New York), Sternberg, Dredging Company, United Dredging Company, Wilbanks & Pierce, Inc., and W. Horace Williams Company, Inc., with respect represents that:

First.

The status of each of the complainants is as follows:

(1) Great Lakes Dredge & Dock Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the City of Chicago, Illinois;

(2) Jahncke Service, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business in the City of New Orleans, in said State;

(3) McWilliams Dredging Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, Illinois, and a place of business and office in the City of New Orleans;

(4) Standard Dredging Corporation (New York) is a corporation duly organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business in the City of New York.

(5) Sternberg Dredging Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the City of St. Louis, Missouri, and a place of business and office in the City of New Orleans;

(6) United Dredging Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the City of New York, New York, and an office and place of business in the City of New Orleans;

(7) Wilbanks & Pierce, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the City of Bradenton, Florida, and an office and place of business in the City of New Orleans;

(8) W. Horace Williams Company, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business in the City of New Orleans.

Second.

Defendant, Philip J. Charlet, is Administrator of the Division of Employment Security of the Department of Labor of the State of Louisiana, is domiciled in the City

of Baton Rouge, Parish of East Baton Rouge, Louisiana, and is charged with the administration and enforcement of the Louisiana Unemployment Compensation Law, which is Act No. 97 of the Legislature of Louisiana for the year 1936, as amended by Act No. 164 of 1938, Act No. 16 of the First Special Session of 1940, and Acts Nos. 10 and 11 of the Regular Session of 1940.

Third.

Complainants have, at various times, since before the year 1936, owned and operated dredging and other similar and appurtenant vessels on the navigable waters of the United States within the State of Louisiana, and have employed, and continue to employ, in connection with, and in furtherance of, said operations, officers and members of the crews of said vessels, including masters and other deck officers; engineers; pursers; levermen; quartermasters; mates; oilers; firemen; ship's machinists, blacksmiths, welders, carpenters and their helpers; stewards, cooks and mess boys; deckhands; shore men; tug captains, engineers, mates and deckhands; launch operators; bargemen; cabin boys; piledrivermen; and others.

Fourth.

As originally enacted, the Louisiana Unemployment Compensation Law provided in section 18(g)(6) that the term "employment" as used in that Act, did not include "Services performed as an officer or member of the crew of a vessel on the navigable waters of the United States". By Act 164 of 1938, effective July 27, 1938, the foregoing provision was changed, so that under section 18(g)(6)(c) of the statute, the term "employment" as used in the Law was to exclude:

"Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States

customarily operating between ports in this State and ports outside this State."

While most of complainants' vessels have frequently operated outside the State of Louisiana in various states and territories of the United States and in foreign countries, they do not otherwise customarily operate between ports in Louisiana and ports outside of Louisiana.

Fifth.

Complainants aver that in so far as the provisions of section 18(g)(6)(C) of the Louisiana Unemployment Compensation Law, quoted above, include within the term "employment" as used in that statute, the officers and members of the crews of vessels owned and operated by complainants on the navigable waters of the United States within the State of Louisiana, including masters and other deck officers, engineers, pursers, levermen, quartermasters, mates, oilers, firemen, ship's machinists, blacksmiths, welders, carpenters and their helpers, stewards, cooks and mess boys, deckhands, shore men, tug captains, engineers, mates and deckhands, launch operators, bargemen, cabin boys, piledrivermen, and others, said section is unconstitutional, null and void, and of no effect, as violative of the provisions of section 2 of the article 3 and section 8 of article 1 of the Constitution of the United States, giving to the Congress of the United States exclusive power to legislate in respect to matters within the admiralty and maritime jurisdiction of the United States, and depriving the states of all power to legislate with regard thereto.

Sixth.

Under the provisions of section 6 of the Louisiana Unemployment Compensation Law, employers are required

to pay contributions equal to nine-tenths of one (9%) per cent of wages payable on employment covered by the statute during the year 1936; one and eight-tenths (1.8%) per cent of such wages for the year 1937; and two and seven-tenths (2.7%) per cent of all wages payable during the year 1938 and each calendar year thereafter. No such contributions have been paid by complainants herein on wages payable to the officers and members of the crews of their vessels while operating on the navigable waters of the United States within the State of Louisiana, except as to the so-called "shore men"; and except as to certain employees of plaintiff W. Horace Williams Company, Inc., for years prior to 1940.

Seventh.

Under the provisions of section 6 of the Louisiana Unemployment Compensation Law, up to the time of its amendment by Act No. 11 of 1940, effective June 30, 1940, each person in employment within the scope of said law was required to contribute one-half of one ($\frac{1}{2}\%$) per cent of his wages, which his employer was required to withhold in trust and to transmit with his own contributions to the Commissioner (Administrator) charged with enforcement of the statute. No such deductions nor payments have been made by complainants with reference to the wages paid to the officers and members of the crews of their vessels operating on the navigable waters of the United States within the State of Louisiana, except as to the so-called "shore men"; and except as to certain employees of plaintiff W. Horace Williams Company, Inc., for years prior to 1940.

Eighth.

Under section 13 of the Louisiana Unemployment Compensation Law, contributions not paid when due there-

under bear interest at the rate of one (1%) per cent per month, plus a penalty of ten (10%) per cent attorneys' fees on both principal and interest; and said section of said statute contains further drastic provisions for the enforcement and collection of said amounts, by civil actions in the Courts of Louisiana, by distraint and by the recordation of liens and seizure and sale of real and personal property by summary proceedings, the burden of proof being always on the employer; and it is further provided in said section that issuance of any certificate of dissolution or of withdrawal from the state of any corporation shall be withheld pending payment of the amounts claimed.

Ninth.

Under the provisions of section 15 of the Louisiana Unemployment Compensation Law, penalties of fines of not less than \$20 nor more than \$200, and imprisonment for not less than ten nor longer than sixty days, or both such fine and imprisonment, are imposed for violations of said statute, and each representation or failure to disclose certain information required in connection with any attempt to avoid becoming or remaining subject to the Act, and each day any of the violations specified in said section of the Act continue, are deemed to be separate offenses.

Tenth.

Complainants aver that as long as said statute remains effective and has not been declared unconstitutional by the Courts, they are faced with possible harrassment by criminal prosecutions for alleged violations thereof, and by civil actions to recover contributions alleged to be due thereunder, with ever-accruing and increasing penal-

ties and interest, as well as possible future difficulties in the matter of certificates of dissolution or withdrawal, should occasion therefor arise; and complainants must either continue to pay contributions on the wages paid those members of the crews known as "shore men", or discontinue paying such contributions, and face at once criminal prosecutions and civil proceedings to enforce such payments with interest and penalties as hereinabove set forth.

Eleventh.

Complainants aver that while defendant has never admitted that section 18(g)(6)(C) of the Louisiana Unemployment Compensation Law is unconstitutional as herein alleged, defendant has advised complainants informally that he does not intend to enforce the provisions of said statute against them with reference to the employment of the officers and members of the crews of their dredging and similar and appurtenant vessels on the navigable waters of the United States within the State of Louisiana, except those who are carried as "shore men"; although, as complainants are advised, his immediate predecessor in office did enforce said statute as to such employees as evidenced by a letter addressed by him under date of February 3, 1940 to Gahagan Construction Corporation of Brooklyn, New York.

Twelfth.

Under section 25 of the Louisiana Unemployment Compensation Law, as added by Act No. 11 of 1940, the right of the Administrator to collect contributions, interest or penalties due for previous years under the statute, prior to its various amendments, is retained in effect; and if complainants should in future be required to pay contri-

butions which under the terms of the statute they should have deducted from wages paid to the officers and members of the crews of their vessels operating on the navigable waters of the United States within the State of Louisiana for prior years, they will not, in many instances, be able to recover from former employees whose whereabouts will no longer be known, nor even from many others, the amounts so required to be deducted and transmitted to defendant.

Thirteenth.

Complainants aver that the amount payable by each of them as contributions under said Louisiana Unemployment Compensation Law, at the time of the institution of this proceeding, if they should be required to pay said contributions with reference to their said maritime employments, would be in excess of three thousand (\$3,000) dollars.

Wherefore complainants pray that Philip J. Charlet, Administrator of the Division of Employment Security of the Department of Labor of the State of Louisiana, be duly cited to appear and to answer this complaint; and that, after due proceedings had, there be judgment herein in favor of complainants and against defendant, decreeing and declaring that the employees of complainants on their dredging and other similar and appurtenant vessels are officers and members of the crews of vessels on the navigable waters of the United States, and that the Louisiana Unemployment Compensation Law, and each of the provisions thereof, and particularly section 18(g)(6) (C) thereof, in so far as they seek to include within the term "employment" under said statute, services performed by the officers and members of the crews of complainants' vessels while operating on the navigable

waters of the United States within the State of Louisiana, including masters and other deck officers, engineers, pursers, levermen, quartermasters, mates, oilers, firemen, ship's machinists, blacksmiths, welders, carpenters and their helpers, stewards, cooks and mess boys, deckhands, shore men, tug captains, engineers, mates and deckhands, launch operators, bargemen, cabin boys, piledrivermen, and others, are unconstitutional, null and void; and for such other and further relief as equity, law and the nature of the case may require.

(Signed) EBERHARD P. DEUTSCH,

(Eberhard P. Deutsch)

of

DEUTSCH AND KERRIGAN,

Attorneys for Complainants.

1700 Hibernia Bank Bldg.,

New Orleans.

RYAN, CONDON & LIVINGSTON,

Of Counsel.

938 Continental Illinois Bank Bldg.,

Chicago, Illinois.

MOTION TO DISMISS, NOTICE THEREOF, AND
PROOF OF SERVICE.

9

Filed September 11, 1940.

(Number and Title Omitted.)

Now into Court, through undersigned counsel, comes Philip J. Charlet, Administrator of the Division of Employment Security of the Louisiana Department of Labor, made defendant in the above entitled and numbered cause,

and without answering the allegations contained in the bill of complaint filed herein, moves the Court as follows:

I.

To dismiss the action because the complaint filed herein fails to state a claim upon which relief can be granted for the reason that the same does not set out a valid cause or right of action.

Wherefore, defendant prays, for the reason set out in this motion, that the suit filed herein by complainants be dismissed at their cost.

Defendant further prays for all necessary orders, decrees and for general and equitable relief.

(Signed) W. C. PERRAULT,

Assistant Attorney General,

(Signed) AUBREY B. HIRSCH,

General Counsel, Division of
Employment Security, Louisiana
Department of Labor,
Attorneys for Defendant.

Address:

Capitol Annex,
Baton Rouge, Louisiana.

NOTICE OF MOTION.

To Eberhard P. Deutsch of Deutsch & Kerrigan, 1700 Hibernia Bank Building, New Orleans, Louisiana, Attorney for Plaintiffs.

Please take notice, that the undersigned will bring the above motion on for hearing before this Court, in the

District Court Room, in the Post Office Building at Baton Rouge, Louisiana, on the second Monday of November, 1940, at ten o'clock in the forenoon of that date, or as soon thereafter as counsel can be heard.

(Signed) W. C. PERRAULT,

(Signed) AUBREY B. HIRSCH,
Attorneys for Defendant.

Address:

Capitol Annex,
Baton Rouge, Louisiana.

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PROOF OF SERVICE.

We hereby certify that a copy of the above and foregoing motion and notice has this day been served on Eberhard P. Deutsch of Deutsch and Kerrigan, 1700 Hibernia Bank Building, New Orleans, Louisiana, attorney for Plaintiffs, by mailing it to him at 1700 Hibernia Bank Building, New Orleans, Louisiana.

Baton Rouge, Louisiana, September 10th, 1940.

(Signed) W. C. PERRAULT,

(Signed) AUBREY B. HIRSCH,
Attorneys for Defendant.

Address:

Capitol Annex,
Baton Rouge, Louisiana.

ANSWER.

12

Filed November 15, 1940.

(Number and Title Omitted.)

To the Honorable, the Judges of the District Court of the United States in and for the Eastern District of Louisiana:

Now into this Honorable Court, through his undersigned counsel, comes Philip J. Charlet in his official capacity as Administrator of the Division of Employment Security of the Department of Labor of the State of Louisiana, and with reservation of all of his rights under his Motion to Dismiss the plaintiffs' complaint heretofore filed herein and presently pending, save and except his right to cause said motion to be disposed of in advance of the merits of this cause, for answer to plaintiffs' complaint denies all and singular the allegations thereof except those hereinafter specially admitted, and now answering said complaint, article by article, avers and says:

I.

Respondent admits the allegations of the first article of plaintiffs' complaint.

II.

Respondent admits the allegations of the second article of said complaint.

III.

Respondent admits the allegations of the third article of said complaint.

IV.

Respondent admits the allegations of fact contained in the fourth article of said complaint and avers that the statutes mentioned in said article speak for themselves.

V.

Respondent denies the allegations of the fifth article of said complaint.

VI.

Respondent avers that the statute referred to in the sixth article of said complaint speaks for itself, but he has no knowledge of the facts alleged in said article and hence denies same.

VII.

Respondent avers that the statute referred to in the seventh article of said complaint speaks for itself, but he has no knowledge of the facts alleged in said article and hence denies same.

VIII.

Respondent avers that he is not required to answer the allegations of the eighth article of said complaint dealing with the contents of the statute mentioned therein.

IX.

Respondent avers that the statute referred to in the ninth article of said complaint speaks for itself.

X.

Respondent avers that the statute referred to in the tenth article of said complaint speaks for itself.

XI.

Answering the eleventh article of said complaint, respondent denies that he ever advised complainants of his intention not to enforce the provisions of the statute referred to in any respect and avers that he intends to and has always intended to enforce each and every provision of the same, as he is charged by law to do; that he has no discretion in the enforcement of said statute and has no authority to waive any of its provisions; and he admits that his predecessor in office, as he intends to do, enforced the provisions of said statute as to all of the employees mentioned in plaintiffs' complaint, inclusive of the "shore men".

XII.

Except as to the recital of the contents of the statute referred to in the twelfth article of said complaint, which he is not required to answer, respondent denies the allegations thereof for lack of information sufficient to justify a belief with respect thereto, and he avers that the obligations imposed upon the complainants by said statute are in no way affected by the alleged inability of said complainants to recover from their former employees amounts due the Division of Employment Security of the Department of Labor of the State of Louisiana, which may not have been but should have been deducted from their wages by said complainants.

XIII.

Respondent admits the allegations of the thirteenth article of said complaint.

XIV.

Further answering said complaint, respondent avers that there is on file herein a statement of facts agreed upon by the attorneys for plaintiffs and respondent herein respecting the character of the operations carried on by plaintiffs' dredges and auxiliary water-craft, the duties performed by the employees engaged in such operations, and other pertinent facts.

Wherefore, respondent prays that plaintiffs' complaint be dismissed at their cost.

(Signed) W. C. PERRAULT,

Second Assistant Attorney
General of the State of Louisiana,

(Signed) AUBREY B. HIRSCH,

General Counsel, Division of
Employment Security, Department of Labor of the
State of Louisiana,

(Signed) E. V. BOAGNI,

Attorney, Division of Employment Security, Department of Labor of the State of Louisiana,

Attorneys for Respondent.

Baton Rouge, Louisiana, November 13, 1940.

I, Aubrey B. Hirsch, one of the attorneys for the respondent in the foregoing answer, certify that a copy of said

answer has this day been served on Hon. R. E. Kerrigan, of the firm of Deutsch and Kerrigan, opposing counsel herein, by mailing the same to him at the office of said firm at 1700 Hibernia Bank Building, New Orleans, Louisiana.

(Signed) AUBREY B. HIRSCH.

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STIPULATION.

(Number and Title Omitted.)

Filed Dec. 12, 1940.

The following facts are hereby stipulated by and between plaintiffs and defendant, through their undersigned counsel of record in this cause.

I.

The employees referred to in plaintiffs' complaint are employed in the navigation and operation of floating hydraulic, clam shell, dipper and hopper dredges, pile drivers, quarter boats, tugs, launches, barges, and other and appurtenant vessels, used for deepening, widening, improving, extending and cleaning navigable channels and other navigable waters in this State, and for creating fill and other similar operations.

II.

Each of the dredges involved has a deck, companionways, an operating bridge, engine room, the usual ship's galley and mess hall, lazarette, holds, hatchways, bilges, double bottom tanks and compartments for fuel, water,

supplies and equipment. They are equipped with quarters which are used by the officers and the members of the crew, and by governmental officials when on board. The dredges carry extensive supplies of machinery and parts, fuel, boats, food, water, and, in varying degrees, all the other forms of equipment, stores and supplies with which all vessels are ordinarily outfitted.

III.

The engine room of each of the dredges is outfitted with marine boilers, pumps, light plant, dynamos and machinery. Some of the dredges are self-propelled. The only difference between the engine room of a hydraulic dredge and that of an ocean-going cargo or passenger vessel is that in the former, the main engine rotates an impeller, and in the latter, a propeller. The impeller is the rotating portion of the main pump.

IV.

Dredges which are not self-propelled are towed from place to place. Many such voyages extend from one state and country to another, frequently over the high seas. In voyages from one scene of operations to another, just as during operations, the dredge and each of the other vessels involved in this cause transports her crew, machinery, equipment, fuel and supplies. On such voyages, the dredge is under command of her master and is manned by her regular officers and crew, just as when dredging.

V.

Dredges which are not self-propelled have the ability to move themselves to a limited extent. This is done by the use of their swinging wires, swinging anchors and

spuds. Swinging wires extend from the bow of the dredge, and are attached to swinging anchors located several hundred feet to port and starboard. On the stern of each dredge are located two spuds, which are long sections of fabricated steel rounded with wooden members, or steel cylinders filled with concrete. These spuds are held upright in keepers at the stern of the dredge, so that they may be manipulated up and down. A spud may be dropped so that its lower end, which is pointed, is embedded in the earth at the bottom of the water, thus serving as a pivot on which the dredge swings. Only one of the spuds is lowered at a time. By manipulating her swinging wires in coordination with her spuds a dredge swings back and forth from port to starboard while dredging. The arc thus inscribed in the operation of the dredge is sometimes as long as four hundred feet or more. In operating in the foregoing manner, a dredge may move forward as much as two thousand feet per day. A dredge may also move forward by manipulating her swinging wires and anchors. She cannot engage in dredging while stationary. She can dredge only while in motion and afloat as described in this paragraph. Some dredges operate with the use of navigational compasses.

VI.

A hydraulic dredge operates through the use of a rotary cutter at the end of a ladder attached to the bow of the dredge. This cutter digs material at various depths through the raising and lowering of the ladder. The material so dug is transported by means of a suction pump through a large pipe line to designated places of deposit either on the water in which the operations are being carried on, or ashore. The floating pipe line is supported by pontoons.

VII.

A hopper dredge operates by drawing material through a large pipe by means of suction and depositing it on board the vessel. The water in the dredged material is then pumped away or allowed to flow overboard, and the material is then transported elsewhere for disposal.

VIII.

Clam shell and dipper dredges are similar in all respects to hydraulic dredges, except that they dig material through the raising and lowering of a large bucket-like apparatus. The former raises and lowers the bucket by means of cables, while the latter moves its bucket by raising and lowering the arm to which the bucket is attached. The material thus dug is deposited on barges and transported away, or the bucket, while full, is swung away from the place of digging, and the material is released.

IX.

A dredge customarily has an auxiliary fleet consisting of two or more tugs, two or more motorboats, fuel barges, equipment barges, a derrick barge, a dragline barge, numerous skiffs and many pontoons. The tugs are used to tow the dredge, barges and pontoons, and the motorboats are used to transport the officers and crew between ship and shore and to carry supplies to the dredge. As their names indicate, the fuel barges are used for transporting and storing fuel, and the equipment barges are used to transport pipe and other equipment needed in the dredging operations. The derrick and dragline barges are used to transport derricks and draglines, and to move and handle pipe, anchors and other heavy equipment.

X.

The attached photographs and photostats, marked Plaintiffs' Exhibits A to N, inclusive, show a typical hydraulic dredge owned by one of the plaintiffs herein, her enrollment and license, and her classification certificate of seaworthiness issued by the American Bureau of Shipping.

XI.

Floating pile drivers are similar to the other craft described herein in construction, equipment, personnel and operation, except that they function only in marine pile driving operations.

XII.

All the dredges and other vessels involved in this litigation are enrolled as vessels of the United States and licensed by the Bureau of Marine Inspection and Navigation of the Department of Commerce to engage in the coasting trade.

XIII.

The personnel of the dredge consists of the following complement of officers and crew: The master, commonly referred to as captain; first officer, generally called deck captain; purser, sometimes called paymaster; four mates; twelve or more deck hands; a chief engineer; three assistant engineers; fourth assistant engineer, sometimes called handyman; three or more engine room oilers; one to three deck oilers; three or more firemen; four levermen; a machinist and one or more helpers; a welder and one or more helpers; a ship's carpenter and helper; an electrician

and helper; a chief steward, two or more cooks; three or more messboys; one or more cabin boys and one or more motorboat operators; four or more tug captains; and four or more tug mates or engineers; shore foreman and crew.

XIV.

The duties of the officers and members of the crew of the dredges are as follows:

(a) The master is in complete charge of the dredge and issues all orders relative to her navigation and dredging operations. He is responsible for the safety of the personnel and for the safety of the dredge.

(b) The first officer, or deck captain, sees to it that the captain's orders are carried out. He conveys these orders to the levermen who navigate and operate the dredge, to the mates in charge of the deck hands and to the engineer in charge of the engine room.

(c) The purser handles the usual duties of a ship's purser. He is the fiscal officer managing all finances, keeping time records, payrolls and operations logs.

(d) The chief engineer is responsible for the proper functioning of all machinery on board. An assistant engineer is on duty on each of the watches and supervises the work of the oilers in the engine room and the firemen in the boiler room.

(e) The mates are in charge of the various watches on deck. They supervise the work of the deck hands, which consists of the customary deck hand duties, such as scrubbing, chipping, painting, manipulating lines and

pontoons, manning life boats, dropping and weighing anchors, and assisting generally in the operation and navigation of the dredge and the other craft involved in this litigation.

(f) The ship's carpenter, machinist, welder, electrician and their helpers, perform the duties which their designations indicate.

(g) The steward is responsible for the food served, planning of the meals, the supplying and condition of the galley and mess hall. Four regular meals are provided daily for the officers and crew aboard the dredge, and coffee and light food are available at all hours. The cooks prepare the meals assisted by the mess boys, who also act as waiters. The cabin boys, who attend to the quarters of the men, are also under the supervision of the steward.

(h) The tug captains are in charge of the tugs and supervise the work of their deck hands and engineers, and deck hands on the other craft, in assisting the dredge to maneuver, in towing fuel and water barges to and from sources of supply, in moving other equipment, barges, and sections of floating pipe and pontoons.

(i) The motorboat operators maneuver and are in charge of the motorboats which transport the vessel's personnel and some minor supplies between ship and shore. The tugs are also sometimes used for these purposes.

(j) When a hydraulic dredge does not deposit the dredged material at another location in the water in which it is operating, it deposits such material on shore or on an island known as a spoil bank. In such cases, the pipe line runs from the dredge over the water to

and along the spoil bank being supported over the water by pontoons. The operation and handling of the pipe line on shore is in charge of a foreman and five assistants, who have ten or more employees under their supervision. Their duties are to locate and lay the pipe line over the land and keep it in working order; to extend the pipe line as occasion requires to distribute the dredged material flowing from its end; and to dismantle the pipe line and assemble its constituent parts. The shore crew may not ordinarily live aboard ship, but they are frequently maintained aboard quarter boats. If more than a day or two are required for the dredge to go from one place of operations to another, the shore crew is usually discharged when operations are discontinued at the first place, and re-employed when operations are commenced at the second place.

XV.

The work aboard the vessel is divided into various watches depending on circumstances and individual situations.

XVI.

Many of the officers aboard the dredges, while not always under strict requirements in that regard, hold federal licenses. By training and experience, and the nature of the work and services rendered, the officers and crew of a dredge are required to meet the same physical, mental and disciplinary standards, and to perform functions similar to those required of any other seamen. They are afforded the facilities of the U. S. Marine Hospitals, the same as any other seamen.

XVII.

The vessels involved in this litigation do not customarily operate between ports in this state and ports outside of this state.

XVIII.

All of said employees are paid wages of varying amounts.

(Signed) DEUTSCH & KERRIGAN,
(Deutsch and Kerrigan)
Attorneys for Plaintiffs,

(Signed) W. C. PERRAULT,
(W. C. Perrault)
Assistant Attorney General
of Louisiana,
and

(Signed) AUBREY B. HIRSCH,
(Aubrey B. Hirsch)
General Counsel, Division of
Employment Security,
Louisiana Department of
Labor,
Attorneys for Defendant.

RYAN, CONDON & LIVINGSTON,
Of Counsel.

22 ORDER TRANSFERRING CASE TO NEW OR-
LEANS DIVISION.

Filed December 12, 1940.

(Number and Title Omitted.)

On motion of plaintiffs and defendant, through their undersigned attorneys of record herein:

It Is Ordered By The Court that this case be, and the same hereby is, transferred to the New Orleans division of this Court.

(Signed) A. J. CAILLOUET,
Judge.

December 12th, 1940.

(Signed) R. EMMETT KERRIGAN,
DEUTSCH & KERRIGAN,
Attorneys for Plaintiffs,
W. C. PERRAULT,
Second Assistant Attorney
General of the State of Louisiana,

AUBREY B. HIRSCH,
General Counsel, Division of
Employment Security, Department of Labor of the
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Louisiana.

OPINION.

Filed March 17, 1942.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

Great Lakes Dredge & Dock Company, Jahncke Service,
Inc., McWilliams Dredging Company, Standard
Dredging Corporation (New York), Sternberg Dredg-
ing Company, Wilbanks & Pierce, Inc., United Dredg-
ing Company and W. Horace Williams Company,
Inc., Plaintiffs,

versus No. 435 Civil Action.

Philip J. Charlet, Administrator, Division of Employment
Security, Louisiana Department of Labor, Defendant.

Messrs. Deutsch & Kerrigan, Eberhard P. Deutsch, New
Orleans, Louisiana

and

Ryan, Condon & Livingston, Chicago, Illinois, for Plain-
tiffs.

Messrs. W. C. Perrault, Asst. Atty. Gen., Baton Rouge,
Louisiana,

and

Aubrey B. Hirsch, General Counsel, Division of Employ-
ment Security, etc., Baton Rouge, Louisiana, for De-
fendant.

CAILLOUET, J.

The eight plaintiffs herein are all engaged in the dredg-
ing business.

They seek a declaratory judgment against the Administrator of the Division of Employment Security of the Department of Labor of the State of Louisiana who is officially charged with the enforcement and administration of the Louisiana Unemployment Compensation Law, or Act 97 of 1936, which has been amended by Act 164 of 1938, Act 16 of the First Special Session of 1940 and Acts 10 and 11 of 1940.

As Section 18 of the statute originally read, there was excepted (—Sec. 18 (6) (g) (7)—) from the term “employment”, as defined therein, any service “performed as an officer or member of the crew of a vessel on the navigable waters of the United States.”

Under the amendment by Act 164 of 1938, this verbiage was changed into that which subsists until the present, so that the particular service excepted under Section 18 (g) (6) (C) is that “performed as an officer or member of the crew of a vessel on the navigable waters of the United States *customarily operating between ports in this State and ports outside this State*”. (Italics supplied.)

The plaintiffs contend that insofar as this provision operates an inclusion, within the “employment” defined by the statute, of the crew, officers and members of vessels owned and operated by them within the State of Louisiana, Section 18 is null, void and of no effect as violative of Section 2 of Article 3 and Section 8 of Article 1 of the Constitution of the United States; which constitutional provisions, plaintiffs aver, vest Congress with the exclusive power to legislate concerning matters within the admiralty and maritime jurisdiction of the United States and deprive the States of all power to legislate relative thereto; and plaintiffs pray that there be rendered a declaratory judgment so decreeing the claimed unconstitutionality.

A motion to dismiss the action for the alleged reason that the complaint fails to state a claim upon which re-

lief can be granted because it does not set out a valid cause or right of action was first filed and was followed by the defendant's answer, but with full reservation of all rights under said motion to dismiss.

The defendant asserts his intention to officially enforce each and every provision of the law under attack and avers that an agreed statement of facts is on file in the record, wherefrom one may determine the character of the operations carried on by the plaintiffs, etc.

The matter was submitted to the Court upon such stipulation, which includes the following pertinent statements of fact, to-wit:

I.

"The employees referred to in plaintiffs' complaint are employed in the navigation and operation of floating hydraulic, clam shell, dipper and hopper dredges, pile drivers, quarter boats, tugs, launches, barges, and other and appurtenant vessels, used for deepening, widening, improving, extending and cleaning navigable channels and other navigable waters in this State, and for creating fill and other similar operations.

* * *

IV.

Dredges which are not self-propelled are towed from place to place. Many such voyages extend from one state and country to another, frequently over the high seas. In voyages from one scene of operation to another, just as during operations, the dredge and each of the other vessels involved in this cause transports her crew, machinery, equipment, fuel and supplies. On such voy-

ages, the dredge is under command of her master and is named by her regular officers and crew, just as when dredging.

* * *

IX.

A dredge customarily has an auxiliary fleet consisting of two or more tugs two or more motorboats, fuel barges, equipment barges, a derrick barge, a dragline barge, numerous skiffs and many pontoons. The tugs are used to tow the dredge, barges and pontoons, and the motorboats are used to transport the officers and crew between ship and shore and to carry supplies to the dredge. As their names indicate, the fuel barges are used for transporting and storing fuel, and the equipment barges are used to transport pipe and other equipment needed in the dredging operations. The derrick and dragline barges are used to transport derricks and draglines, and to move and handle pipe, anchors and other heavy equipment.

* * *

XII.

All the dredges and other vessels involved in this litigation are enrolled as vessels of the United States and licensed by the Bureau of Marine Inspection and Navigation of the Department of Commerce to engage in the coasting trade.

* * *

XIII.

The personnel of the dredge consists of the following complement of officers and crew: The master, commonly referred to as captain; first officer, generally called deck

captain; purser, sometimes called paymaster; four mates; twelve or more deck hands; a chief engineer; three assistants engineers; fourth assistant engineer, sometimes called handyman; three or more engine room oilers; one to three deck oilers; three or more firemen; four levermen; a machinist and one or more helpers; a welder and one or more helpers; a ship's carpenter and helper, an electrician and helper; a chief steward, two or more cooks; three or more messboys; one or more cabin boys and one or more motorboat operators; four or more tug captains; and four or more tug mates or engineers; shore foreman and crew.

XIV.

The duties of the officers and members of the crew of the dredges are as follows:

(a) The master is in complete charge of the dredge and issues all orders relative to her navigation and dredging operations. He is responsible for the safety of the personnel and for the safety of the dredge.

(b) The first officer, or deck captain, sees to it that the captain's orders are carried out. He conveys these orders to the leverman who navigate and operate the dredge, to the mates in charge of the deck hands and to the engineer in charge of the engine room.

(c) The purser handles the usual duties of a ship's purser. He is the fiscal officer managing all finances, keeping time records, payrolls and operations logs.

(d) The chief engineer is responsible for the proper functioning of all machinery on board. An assistant engineer is on duty on each of the watches and supervises

the work of the oilers in the engine room and the firemen in the boiler room.

(e) The mates are in charge of the various watches on deck. They supervise the work of the deck hands, which consists of the customary deck hand duties, such as scrubbing, chipping, painting, manipulating lines and pontoons, manning life boats, dropping and weighing anchors, and assisting generally in the operation and navigation of the dredge and the other craft involved in this litigation.

(f) The ship's carpenter, machinist, welder, electrician, and their helpers, perform the duties which their designations indicate.

(g) The steward is responsible for the food served, planning of the meals, the supplying and condition of the galley and mess hall. Four regular meals are provided daily for the officers and crew aboard the dredge, and coffee and light food are available at all hours. The cooks prepare the meals assisted by the mess boys, who also act as waiters. The cabin boys, who attend to the quarters of the men, are also under the supervision of the steward.

(h) The tug captains are in charge of the tugs and supervise the work of their deck hands and engineers, and deck hands on the other craft, in assisting the dredge to maneuver, in towing fuel and water barges to and from sources of supply, in moving other equipment, barges, and sections of floating pipe and pontoons.

(i) The motorboat operators maneuver and are in charge of the motorboats which transport the vessel's personnel and some minor supplies between ship and shore. The tugs are also sometimes used for these purposes.

(j) When a hydraulic dredge does not deposit the dredged material at another location in the water in which it is operating, it deposits such material on shore or on an island known as a spoil bank. In such cases, the pipe line runs from the dredge over the water to and along the spoil bank being supported over the water by pontoons. The operation and handling of the pipe line on shore is in charge of a foreman and five assistants, who have ten or more employees under their supervision. Their duties are to locate and lay the pipe line over the land and keep it in working order; to extend the pipe line as occasion requires to distribute the dredged material flowing from its end; and to dismantle the pipe line and assemble its constituent parts. The shore crew may not ordinarily live aboard ship, but they are frequently maintained aboard quarter boats. If more than a day or two are required for the dredge to go from one place of operations to another, the shore crew is usually discharged when operations are discontinued at the first place, and re-employed when operations are commenced at the second place.

* * * *

XVI.

Many of the officers aboard the dredges, while not always under strict requirements in that regard, hold federal licenses. By training and experience, and the nature of the work and services rendered, the officers and crew of a dredge are required to meet the same physical, mental and disciplinary standards, and to perform functions similar to those required of any other seamen. They are afforded the facilities of U. S. Marine Hospitals, the same as any other seamen.

XVII.

The vessels involved in this litigation do not customarily operate between ports in this state and ports outside of this state.

XVIII.

All of said employees are paid wages of varying amounts."

It is conceded by the plaintiffs that the Louisiana Unemployment Compensation Statute is broad enough in its terms to cover the employment of all of their respective employees, but they seek to avoid the effect of such coverage by contending that the Legislature's enactment of the statute, so as to make the law applicable to the particular employments at issue, constituted an invasion of a field of legislation reserved exclusively to Congress by the Federal Constitution.

On the other hand, the defendant's position is, in effect, that the Louisiana statute does no more than levy a non-discriminatory excise tax based upon the exercise of the privilege of employing individuals measured by the wages paid; the right to impose which undoubtedly existed prior to the adoption of the Constitution and was never surrendered by the several states. Defendant further urges, substantially, that said Louisiana Unemployment Compensation Law in no manner changes, modifies or affects the rights, duties or obligations of parties to maritime contracts, nor contravenes the essential purpose of any act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony or uniformity of that law in its international and interstate relations.

For the present purposes it may be assumed, though it is not decided, that all of the employments at issue are maritime in character and within admiralty jurisdiction.

Plaintiffs, in support of their contention that the Louisiana Unemployment Compensation Act (insofar as its provisions cover such employment) is violative of the Constitution of the United States, place great reliance upon the Workmen's Compensation cases, wherein the United States Supreme Court held that State Compensation statutes may not be applied to seamen in the face of the settled doctrine that Congress is vested with paramount power to fix and determine the maritime law which shall prevail throughout its nation; and that no state legislation is valid which "works material prejudice to the characteristics features of the general maritime law or interferes with the proper harmony and uniformity of the law".

Southern Pacific Company v. Jensen, 244 U. S. 205, 27 S. Ct. 524 (1917);

Knickerbocker Ice Co., v. Stewart, 253 U. S. 149, 40 S. Ct. 438 (1920);

Washington v. Dawson, 264 U. S. 219, 44 S. Ct. 302 (1924)

In the Southern Pacific v. Jensen case, the Supreme Court said of the remedy attempted to be provided (against their employers) to injured employees engaged in longshoremen's work, under the New York State Compensation Law, that it was a remedy of such character as was wholly unknown to the common law, incapable of being enforced by the ordinary processes of any Court, and not saved to suitors from the grant of exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction vested in the Federal District Courts. 28 U. S. C. A. 41 (3).

The Knickerbocker Ice Co., v. Stewart case involved the attempt of Congress to alter the grant to United

States District Courts of exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, by adding to the saving clause, i. e. "saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it", the following words, viz: "and to claimants the rights and remedies under the workmen's compensation law of any state."

After a review of the *Southern Pacific Company vs. Jensen* case and others, said the Supreme Court (40 S. Ct. p. 440):

"As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the federal government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere."

Observing that Congress, by so amending the saving clause aforementioned, had evidently sought to permit application of state compensation laws to injuries sustained by employees within admiralty and maritime jurisdiction, and to circumvent the objection to such an application, which had been pointed out by the *Southern Pacific Co. vs. Jensen* case, the Supreme Court held that Congress

could not delegate its power of legislation on the subject to the several states.

In *Washington vs. Dawson*, *supra*, the immediate question presented was whether the defendant stevedoring business, in the operation of which its employees worked only upon ships in navigable waters, could be compelled to contribute to the accident fund established by the Industrial Insurance Act of the State of Washington, which provided for workmen's compensation.

The state statute, under its terms, was made applicable to employers and workmen engaged in maritime work or occupation *only* to the extent that the payroll of such workmen was clearly separable from the payroll covering workmen employed under circumstances in which liability did or might exist in the United States Courts of Admiralty; and the State Supreme Court (122 Wash. 572, 582, 211 Pac. 1059) held, under authority of *Southern Pacific Co. vs. Jensen* and *Knickerbocker Ice Co. vs. Stewart*, *supra*, that the Industrial Insurance Department had no right to collect a percentage of the defendant's payroll, since the bringing of such employer within the provisions of the Act "would work material prejudice to the characteristic features of the general maritime law, and interfere with the proper harmony and uniformity of that law in its international and interstate relations."

It was contended by the State in the U. S. Supreme Court (as in the State Court), that the objections to the requirement of such contributions in support of workmen's compensation statutes, which had been previously pointed out by the two just mentioned cases, were removed by the Act of Congress of June 10, 1922, c. 216, 42 Stat. 634. (See 41 (3), 28 U. S. C. A.).

However, the State decision under review was affirmed by the Court specifically on authority of its aforementioned earlier decision in *Knickerbocker Ice Co. vs. Stewart*, 253 U. S. 149, 40 Sup. Ct. 438, 64 L. Ed. 834.

Counsel for the State of Washington contended that the doctrine enunciated by the Supreme Court in *Southern Pacific Co. vs. Jensen*, 244 U. S. 205, 37 Sup. Ct. 524, 61 L. Ed. 1086, and in *Knickerbocker Ice Co., vs. Stewart*, supra, was modified by subsequent decisions of the Court, i. e. *Western Fuel Co. vs. Garcia*, 257 U. S. 233, 42 Sup. Ct. 89, 66 L. Ed. 210, *Grant-Smith Porter Ship Co. vs. Rhode*, 257 U. S. 469, 42 Sup. Ct. 157, 66 L. Ed. 321, and *Industrial Commission vs. Nordenholt Co.*, 259 U. S. 263, 42 Sup. Ct. 473, 66 L. Ed. 933.

The Court, after reviewing each of said cases, held that none of them departed from the doctrine laid down in *Southern Pacific Co. vs. Jensen* and *Knickerbocker Ice Co., vs. Stewart*, and that the provisions of the Act of June 10, 1922, whereby there was given "to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the workmen's compensation law of any state"—which rights and remedies were thereby made exclusive—could not be reconciled with such doctrine; the opinion specially calling attention to the fact that Congress, by the enactment referred to, had not exercised its undoubted power to amend, alter or revise the maritime law by legislation of general application, but had definitely manifested its intention to permit any state to alter the maritime law in such manner as best suited its own purposes,—a procedure which, necessarily, opened the door to the establishment of conflicting requirements, engendering resultant confusion and difficulties and destroying the uniformity that had been sought when the law of the sea was adopted by the Constitution as the measure of maritime rights and obligations.

These decisions, which are so relied on by plaintiffs, all emphasize the salient fact that the Courts were there dealing with situations involving the attempted substitu-

tion by state legislation of different rules for the governing of the relationships existing between employers and employees under contracts of maritime employment; from the language of each statute at issue, there stood out in bold relief the definite purpose of materially altering the rights and obligations of the parties to a maritime contract.

The decreed invalidity of the Workmen's Compensation Laws involved in said Supreme Court decisions just referred to, was based, in each instance, upon the Court's ascertainment of the fact that the state statute under attack actually impinged upon the essential features of the substantive maritime law; that substantial modification or complete displacement of right, obligation, liability, or remedy for maintenance and enforcement thereof, was attempted by statutory enactment, not of Congress, but of state legislature.

In no case, however, did the Supreme Court avoid a state statute which neither modified the substantive maritime law, nor dealt with the remedies enforceable in admiralty.

Red Cross Line vs. Atlantic Fruit Company, 264 U. S. 109, 44 S. C. R. 274 (1924).

Plaintiffs contend that a clear and direct analogy exists between the tax to create a state Workmen's Compensation Fund and the tax here at issue; and they reason that, because the Supreme Court held (in the cited workmen's compensation cases upon which they so rely) that permitting the operation of the state statutes *there* under examination would effect an invasion of the uniformity in respect to maritime matters which the Federal Constitution had sought to establish, it should now be decided, in effect, that the Louisiana Unemployment Compensation Act similarly "works material prejudice to the characteristic features of the general maritime law" and "interferes with the proper harmony and uniformity of the law."

Each one of the Workmen's Compensation statutes that were decreed illegal by the Supreme Court did materially alter the rights and obligations of employers and employees under maritime contracts; and disturbed, substantially, the desired uniformity which the Federal Constitution had sought to firmly establish. These state statutes all had for their definite purpose the prescribing of rights and liabilities of employers and employees in cases of maritime injuries, and thus did clearly invade and trench upon the exclusive field of admiralty, and the factual set-up in each case wherein invalidity of state statute was so decreed, reflected the working of material prejudice to the characteristic features of the general maritime law, and not, by way of exception to the general rule, simply a matter of mere local concern, with reference to which the rules of maritime law might be validly modified or supplemented by state legislation.

In this connection, see:

Union Fish Co. vs. Erickson, 248 U. S. 308, 39 Sup. Ct. 112 (1919);

Grant Smith-Porter Ship Co. vs. Rohde, 257 U. S. 469, 42 Sup. Ct. 157 (1922).

The Louisiana Unemployment Compensation Law does not, in the remotest degree, seek to directly affect the relationship inter se of the employer and employee under a maritime contract. The employment agreement in its terms and operating influence, and, particularly, the rights, obligations and liabilities of the parties contractant one to the other, all remain untouched and unchanged and still wholly under the aegis of admiralty law; no subtraction, addition or substitution takes place.

There is no question, here, of placing "the rules and limits of maritime law under the disposal and regulation"

of Louisiana and its unemployment compensation statute works no destruction of the "uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign States", as the Supreme Court held can not be permitted, in *The Lottawanna* (Rodd v. Heartt et al), 21 Wll. 558, 22 L. ed. 654 (at 662).

The Louisiana Unemployment Compensation Act prescribes that each employer shall pay contributions equal to certain specified percentages of wages as are "payable by him with respect to employment". Such contributions find their way into the state Unemployment Compensation Fund, which is administered by the Commissioner, and from said fund is paid unemployment compensation to unemployed workers in the manner and under the circumstances reflected by the statute terms.

Section 1 of the Act embodies a declaration of state public policy, reading thus:

"As a guide to the interpretation and application of this Act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burdens which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintain-

ing purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons."

That a state may raise funds by taxation in aid of its general welfare admits of no doubt.

Carmichael vs. Southern Coal & Coke Co., 301 U. S. 495, 514, 57 S. Ct. 868, 875 (1937).

The contributions exacted of the employer by the Louisiana Unemployment Compensation Act are properly referred to as excise taxes.

Chas. C. Steward Machine Co., vs. Davis, 301 U. S. 548, 57 S. Ct. 883 (1937).

Beeland Wholesale Co., vs. Kaufman, Chairman, Alabama Unemployment Compensation Commission, etc., 174 So. 516 (Ala. 1937).

Helvering, Com'r. of Int. Revenue, vs. Davis, 301 U. S. 619, 57 S. Ct. 904 (1937).

However, it is immaterial whether these taxes be referred to as "excise taxes" or by other name.

Carmichael vs. Southern Coal & Coke Co., *supra* (301 U. S., at 509, 57 S. Ct. at 872).

Conceding, for the purposes hereof, that all phases of the dredging business carried on by plaintiffs may properly be characterized as maritime and within admiralty, the State of Louisiana may nevertheless exercise—except there be constitutional prohibition against so doing—its inherent and not surrendered sovereign right of imposing excise taxes upon the exercise of the privilege of employing needed workers for the conduct and operation of such business within the borders of the State.

As relating to this, see the following cases, viz:

- Gibbons vs. Ogden, 9 Wheat. 1, 6 L. ed. 23 (1824);
 Chas. C. Steward Machine Co., vs. Davis, *supra* (301
 US., at 579, 57 S. Ct., at 880);
 Carmichael vs. Southern Coal & Coke Co., *supra* (301
 U. S. at 579, 57 S. Ct. at 880);

Reference is also made to:

Lawrence et al vs. State Tax Commission of Mississippi, 286 U. S. 276, 52 S. Ct. 556 (1932).

The constitutional grant of admiralty and maritime jurisdiction to the Federal Government (Art. 3, § 2, and Art. 1, § 8) is in no wise trenching upon, or detracting from, by the attempted levying and collection by a state of an excise tax upon the act of employing an "officer or member of the crew of a vessel on the navigable waters of the United States" when, *as here*, such vessel does not customarily operate from ports within, to ports beyond, the boundaries of such state; the tax is levied upon the "employing" but the resultant state or condition of "employment" remains completely under the dominion of admiralty and maritime jurisdiction. Nor can the fact that Congress, in enacting the Social Security Act, excepted from the term "employment" the service performed by persons as officers and members of a crew of a vessel on the navigable waters of the United States, of itself, operate as a prohibition against the State's levy of such an excise tax upon the act of employing such officers and members of crew, inasmuch as the two lawmaking bodies are independent of each other and the State never surrendered to the Federal Government its undoubted right of levying excise taxes.

Nor can such a prohibition be deduced from the further fact that the enactment of the two statutes envisaged a

cooperative endeavor of Nation and State to meet the grave emergency problem of unemployment,—from the fact that the state law was intended to be integrated with the federal statute in order that the two sovereigns might work together to a common end (to use language from *Buckstaff Bath House Co. vs. McKinley*, 308 U. S. 358, 60 S. Ct. 279); nor can it be reasonably contended that the state legislator was held to a punctilious setting of foot nowhere but in the tracks of Congress in going forward towards the attainment of the jointly-desired result. Surely no fault can be found with the legislator's doing more than Congress, if the purpose of the doing was directed to the same common end.

If it could be held that the taxing of the act of employing (as relates to plaintiff's employees who are engaged in their service as officers and members of crew under the circumstances attending plaintiffs' dredging operations in Louisiana) is prohibited, the prohibition would have to be based upon other ground than the exception of their employment from the meaning of the term "employment", as such term is used in *that* statute.

There must be noted, however, the plaintiffs' further contention to the effect that, inasmuch as their vessels are all enrolled and licensed as vessels of the United States "entitled to the privileges of vessels employed in the coasting trade", the exaction of an excise tax by the State upon the employment of needed officers and members of crew for the navigation of such vessels under authority of said United States license, operates to restrict the free exercise of the license rights derived from the Constitution and laws of the United States; in support of which contention, plaintiffs cite *Moran vs. City of New Orleans*, 112 U. S. 69, 5 S. Ct. 38 (1884), *Harmon vs. City of Chicago*, 147 U. S. 396, 13 S. Ct., 306 (1893), and like cases; but a reading of the same makes it quite clear that, in each instance, the local authority in interest had sought

to superimpose an additional license requirement which was to be complied with (under severe penalty), as condition precedent to navigating United States waters in commerce; or, in other words, the privileges conferred by the United States license at issue were not to be enjoyed, except subject to prior compliance with additional conditions laid down by the local taxing authority—a plain prescribing of regulations repugnant to and inconsistent with those of Congress; and, very properly, held invalid.

The excise tax on employment levied by the Louisiana Unemployment Compensation Act, insofar as it relates to the employment by plaintiffs of officers and members of crew engaged in carrying on plaintiffs' dredging work within the State by means of enrolled and licensed vessels, which do not customarily operate "between ports in this State and ports outside this State", does not have the effect, even indirectly, of superimposing additional license requirements, upon the compliance wherewith is conditioned the enjoyment of the United States license right to navigate in the coasting trade, without let or hindrance.

As the Supreme Court, speaking through Chief Justice Hughes, observed in the case of *Just et al vs. Chambers (The Friendship II)*, 312 U. S. 668, 61 S. Ct. 687 (1941), which was before it on certiorari to the United States Circuit Court of Appeals for the Fifth Circuit,

" * * * a state, in the exercise of its police power may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action 'does not contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations.' "

In view of the premises, the Court's findings of fact and conclusions of law are as follows, viz:

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FINDINGS OF FACT.

The plaintiffs have failed to establish that the Louisiana Unemployment Compensation Law, i. e. Act. 97 of 1936 (as amended by Act 164 of 1938, Act 16 of the First Special Session of 1940 and Acts 10 and 11 of 1940) does contravene any act of Congress, or does work prejudice to the characteristic features of the maritime law, or does interfere with its proper harmony and uniformity in its international and interstate relations.

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CONCLUSIONS OF LAW.

1. The State of Louisiana, in the exercise of its police power, enjoyed the clear right to establish rules applicable to the act of employing on land and water within its limits (as are to be found embodied in said mentioned Unemployment Compensation Law, *supra*), even though such rules incidentally affect maritime affairs, provided that there was no such contravention of act of Congress, or the working of prejudice to the characteristic features of the maritime law, or interference with its proper harmony and uniformity in its international and interstate relations.

2. Plaintiffs' prayer that this Court decree unconstitutional, null and void said state statute, and particularly, Section 18 (g) (6) (C) thereof, insofar as it is sought to include within the term "employment" used therein the "services performed by the officers and members of the crews of complainants' vessels while operating on the

navigable waters of the United States within the State of Louisiana," is devoid of sound legal basis and must be denied; and plaintiffs' action, therefore, should be dismissed at their cost.

Let judgment be so entered.

(Signed) A. J. CAILLOUET,
United States District Judge.

New Orleans, Louisiana, March 17th., 1942.

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JUDGMENT.

Extract from the Minutes.

February Term, 1942.

New Orleans, Tuesday, March 17th, 1942.

Court met pursuant to adjournment;

Present: Hon. Wayne G. Borah, Judge.

Hon. A. J. Caillouet, Judge.

This cause came on for trial on the merits on December 18th, 1940, and was argued by counsel for the respective parties and submitted, when the Court took time to consider.

Whereupon and upon due consideration thereof, and for the written reasons of the Court on file herein,

It Is Ordered, Adjudged And Decreed that plaintiffs' action be dismissed at their cost.

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NOTICE OF APPEAL.

Filed Mar. 24, 1942.

(Number & Title Omitted.)

To the Honorable, the Judges of the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division:

Notice is hereby given that Great Lakes Dredge & Dock Company, Jahncke Service, Inc., McWilliams Dredging Company, Standard Dredging Company (New York), Sternberg Dredging Company, United Dredging Company, Wilbanks & Pierce, Inc., and W. Horace Williams Company, Inc., plaintiffs in the above numbered and entitled action, hereby appeal to the Circuit Court of Appeals for the Fifth Circuit from the judgment entered in this action on March 17, 1942, dismissing plaintiffs' action.

(Signed) EBERHARD P. DEUTSCH,

of

DEUTSCH, KERRIGAN &
STILES,

Attorneys for Plaintiffs.

17th Floor Hibernia Bank Bldg.
New Orleans.

MOTION AND ORDER TRANSMITTING EXHIBITS IN
THEIR ORIGINAL FORM.

Filed April 11th, 1942.

(Number and Title Omitted.)

On motion of Deutsch, Kerrigan & Stiles, attorneys for plaintiffs in the above numbered and entitled action, and

upon suggesting to the Court that an appeal has been taken from the judgment rendered on March 17, 1942, in this action in the United States District Court of the Eastern District of Louisiana, and that a designation of various portions of the record, including plaintiff's exhibits, A through N inclusive, which are to be contained in the record of appeal has been previously filed;

And upon further suggesting to the Court that it will be necessary to have these exhibits, as aforementioned included in the transcript in their original form for filing in the United States Circuit Court of Appeal.

(Signed) BREARD SNELLINGS,

(Breard Snellings)

of

DEUTSCH, KERRIGAN &
STILES.

ORDER.

It is hereby ordered that the Clerk of the United States District Court, in and for the Eastern District of Louisiana include in the transcript in their original form, plaintiff's exhibits designated by the alphabetical inscriptions, A through N inclusive, and that they be filed as such in the United States Circuit Court of Appeal.

(Signed) A. J. CAILLOUET,

Judge.

New Orleans, La., April 11th, 1942.

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DESIGNATION OF CONTENTS.

Filed March 25, 1942.

In the District Court of the United States in and for the
Eastern District of Louisiana, New Orleans Division.

File No. 435, Civil Action.

Great Lakes Dredge & Dock Company, et al.,
vs.

Philip J. Charlet, etc.

Plaintiffs and appellants in the above entitled and captioned action hereby designate the following portions of the record to be contained in the record on appeal:

1. Plaintiffs' complaint.
2. Defendant's motion to dismiss.
3. Defendant's answer.
4. Stipulation of facts, with attached exhibits.
5. Joint motion and order transferring case to New Orleans Division.
6. The judgment entered by the District Court.
7. The opinion of the Judge of the District Court.
8. The notice of appeal with date of filing.

(Signed) EBERHARD P. DEUTSCH,
(Eberhard P. Deutsch)

of

DEUTSCH, KERRIGAN &
STILES,

Attorneys for Plaintiffs.

17th Floor Hibernia Bank Bldg.,
New Orleans.

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CLERK'S OFFICE.

I, A. DALLAM O'BRIEN, JR., Clerk of the District Court of the United States for the Eastern District of Louisiana do hereby certify that the foregoing 38 pages contain and form a full, true and complete transcript of the record in the case entitled "Great Lakes Dredge & Dock Company, et al., vs. Philip J. Charlet, etc.," No. 435 of the Civil Action Docket of this Court, as made up in accordance with the Designation of Contents copied herein.

Witness my hand and the seal of said Court at the City of New Orleans, La., this 13th day of April, A. D. 1942.

A. DALLAM O'BRIEN, JR.,
Clerk.

(Seal)

By H. W. NIEHUES,
(H. W. Niehues)
Deputy Clerk.

[fol. 52] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

JOINT MOTION OF COUNSEL TO SUBSTITUTE C. C. HUFFMAN,
ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, LOUISIANA
DEPARTMENT OF LABOR, APPELLEE IN THE PLACE AND
STEAD OF PHILIP J. CHARLET—Filed January 19, 1943

UNITED STATES CIRCUIT COURT OF APPEALS

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, et al., Appellants,
versus

PHILIP J. CHARLET, ADMINISTRATOR, DIVISION OF EMPLOYMENT
SECURITY, LOUISIANA DEPARTMENT OF LABOR, Appellee

Appellants and appellee, through their undersigned attorneys of record herein, move the Court to substitute as appellee C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, in the place and stead of Philip J. Charlet, who no longer occupies said office.

(S.) R. Emmett Kerrigan, Attorney for Appellants.

(S.) W. C. Perrault, Second Assistant Attorney General of the State of Louisiana, Attorney for Appellee.

[fol. 53] ORDER OF SUBSTITUTION

Extract from the Minutes of January 19, 1943

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, et al.,
versus

PHILIP J. CHARLET, ADMINISTRATOR, DIVISION OF EMPLOYMENT
SECURITY, LOUISIANA DEPARTMENT OF LABOR

On Consideration of the motion filed by counsel for both parties, to substitute as appellee, C. C. Huffman, Administrator, Division of Employment Security, Louisiana De-

partment of Labor, in the place and stead of Philip J. Charlet, who no longer occupies said office;

It Is Ordered that C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, be substituted as party appellee in this cause in the place and stead of Philip J. Charlet, who no longer occupies said office.

(S.) Saml. H. Sibley, U. S. Circuit Judge.

New Orleans, La., January 19, 1943.

[fol. 54]

ARGUMENT AND SUBMISSION

Extract from the minutes of January 25, 1943

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, et al.,

versus

PHILIP J. CHARLET, Administrator, Division of Employment Security, Louisiana Department of Labor, (C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, Substituted in the Place and Stead of Philip J. Charlet)

On this day this cause was called, and, after argument by R. Emmett Kerrigan, Esq., for appellants, and W. C. Perrault, Esq., for appellee, was submitted to the Court.

[fol. 55] OPINION OF THE COURT—Filed February 11, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, et al., Appellants,
versus

PHILIP J. CHARLET, Administrator, Division of Employment
Security, Louisiana Department of Labor, (C. C. Huff-
man, Administrator, Division of Employment Security,
Louisiana Department of Labor, substituted in the place
and stead of Philip J. Charlet), Appellee

Appeal from the District Court of the United States for the
Eastern District of Louisiana

(February 11, 1943)

Before Hutcheson, Holmes, and McCord, Circuit Judges

HUTCHESON, Circuit Judge:

Alleging that an actual controversy had arisen and was existing between them and Charlet, as Administrator of [fol. 56] the Louisiana Unemployment Compensation Law,¹ over whether the said law could be lawfully applied to and enforced against them in respect to the employment by them of officers and crewmen in furtherance of their dredging operations on the navigable waters of the United States within the State of Louisiana, plaintiffs brought this suit for a declaration that in respect of the relation of employment between plaintiffs and their employees, they are not subject to the act. As their complaint alleges it, the basis of their claim to a declaration is: that the Louisiana Unemployment Compensation Law was amended in 1938 to bring within its provisions all the vessels and all the employees of plaintiffs, with the result that if valid, plaintiffs were required thereby to pay to the state unemployment fund,

¹ Act 97 of 1936, as amended by Act 164 of 1938; Act 16 of the First Special Session and Acts 10 and 11 of the Regular Session of 1940.

contributions, measured by the wages paid by them to their employees, and in addition, under the Act of 1936, to withhold a portion of the wages due their employees; that in view of the provisions of Art. 1, Sec. 8 and Art. 3, Sec. 2 of the Constitution of the United States, giving to the Congress exclusive power to legislate with respect to matters within the admiralty and maritime jurisdiction of the United States and depriving the states of all power to legislate thereto, the act as so amended is unconstitutional, null and void. The defense was: that the act levied a non-discriminatory excise tax, based upon the exercise of the right or privilege of employing individuals, measured by the wages paid; that the right to levy such tax is inherent in state sovereignty and was not surrendered to the United States; that the statute in no way affects the rights, duties or obligations as between themselves of parties to a maritime contract, and in no way interferes with or contravenes the maritime law or affects the uniformity of that law, or contravenes the purpose or intent of any act of Congress. [fol. 57] Submitted to the court on a stipulation of fact, these defenses were maintained, the claim for declaratory judgment was accordingly denied, and the action was dismissed. The district judge, in a thorough and exhaustive opinion, canvassing the facts and the law,² set out both fully and precisely the facts upon which the decision of the case turned, and gathered and adequately discussed the controlling authorities. We agree not only with the conclusion reached, but generally with what is said in the opinion. We shall not, therefore, enter into any detailed statement or discussion of either the facts or the authorities, but, referring to the opinion for that detail, shall content ourselves with a brief summation. In reaching this conclusion, we have assumed, without deciding, though appellee vigorously contests this,³ that within the exception of Subd.

² Great Lakes Dredge & Dock Co. v. Charlet, 43 Fed. Sup. 981.

³ Pointing out that the Louisiana statute exempts "services performed as an officer or member of a crew of a vessel on the navigable waters of the United States customarily operating between ports in this state and ports outside this state", Sec. 18g 6(e) of Act 97 of 1936, as amended, he cites administrative rulings under unemployment compensation

3, Sec. 1107, 42 U. S. C. A., all of plaintiffs' employees are officers and members of the crew of a vessel on the navigable waters of the United States. So assuming, we entirely agree with the district judge that plaintiffs are not entitled to the declaration they seek that the Louisiana Unemployment Compensation Act may not, because of the invoked constitutional provisions, be enforced as to them. It is stipulated that the employment relation sought to be taxed involves employees, described in detail, including what are called "shore crews", employed in the customary and usual way in the operation and navigation of dredges, pile drivers and other appurtenances used for deepening, widening, improving, extending and cleaning navigation channels and other navigable waters in Louisiana and for creating fill [fol. 58] and other similar operations, and that such vessels do not customarily operate between ports in Louisiana and ports outside of it.

As regards those activities which are directly connected with commerce and navigation in their interstate and international aspects, it has been held,⁴ with respect to workmen's compensation laws, that the law must be uniform throughout the United States, and the laws of the various states are not competent to modify or vary it. The rationale of these cases is that a state law cannot, as between the parties, change or affect rights and obligations arising under a maritime contract or matters having a direct relation thereto. But so narrow and tenuous is the authority of these cases that it is now the well settled rule that, though a contract be maritime, if it is local in character and has no direct relationship to navigation as navigation, state compensation laws may validly apply to persons the contract affects, and this is so because such laws do not interfere with any characteristic feature of general maritime law, do not substantially affect essentially maritime rights and obligations. Thus exception after exception

statutes of the several states holding that similar workers are not within an exception as broadly worded as that of the federal act. Appellee cites also to the same effect, *Puget Sound Bridge & Dredging Co. v. State Unemployment Compensation Commission*, 126 Pac. (2) 37.

⁴ *Southern Pacific vs. Jensen*, 244 U. S. 205, and cases following it.

to the board rule the *Jensen* case sought to lay down has been grafted upon it until it has become the mere shadow of its former self. This is well illustrated in the long line of cases culminating in *Just v. Chambers*, 312 U. S. 383, in the statement, "With respect to maritime torts, a state may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state act is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation", and the holding, that under Florida law, permitting survival against a wrongdoer's estate of a cause of action against him for tort, a cause of action for a maritime tort committed in Florida waters will survive in admiralty. If, therefore, the statutes in question here could be said to at all affect the contracts as between plaintiffs and employees, that affecting within the authority of these cases, would fall within the exceptions to, rather than within the rule of, the *Jensen* case. But we think it quite plain that the statute is not a regulatory but a taxing act, and that, as such it has no effect whatever upon, but leaves, the contracts, as between plaintiffs and their employees, exactly as they are in respect of every right and obligation which, viewed as maritime contracts, they grant and impose. *Beeland v. Kaufman*, 174 So. 516; *Globe Grain vs. Industrial Com.*, 91 Pac. (2) 512.

As a taxing act, it stands on the firmest kind of ground. It is an excise levied upon that aspect of the employment relation which represents the exercise in a state of the right and privilege of employing persons upon work carried on there, *Stewart Machine Co. v. Davis*, 301 U. S. 548; *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495. It is unquestionably valid unless it injuriously trenches upon matters of exclusive federal concern or contravenes some paramount federal legislation. Appellants say that it does both. We think it clear that it does neither. Since the time of *Gibbons vs. Ogden*, 9 Wheaton (1), it has been settled that "the grant of the (federal) power to lay and collect taxes is like the power to regulate commerce, made in general terms, and has never been understood to interfere with the exercise of the same power by the states"; and that "while a state may not use its taxing power to regulate or burden interstate commerce * * *, a state excise tax which affects such commerce, not directly but only incidentally and remotely, may be entirely valid where it is clear

that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights", *Hump* [fol. 60] *Hairpin Mfg. Co. vs. Emerson*, 258 U. S. 295. Thus it is settled that a state may, without offending against the commerce clause, tax instruments used in interstate commerce, *Western Union Tele. Co. v. Mass.*, 125 U. S. 530, as well when they are, as when they are not, maritime, *Old Dominion S. S. Co. vs. Virginia*, 198 U. S. 299. Indeed, exceptional cases aside, it may be stated generally that where such taxes have been invalidated by the courts, the situations are such that a number of states might impose similar taxes, with the result of a pyramiding of tax burdens which could destroy or seriously impair interstate commerce, *Western Live Stock Co. v. Bureau*, 303 U. S. 250, or the statutes have provided an illegal method of measuring or computing the tax as in the case of a tax on the gross receipts from interstate business. *Puget Sound Stevedoring Co. v. Tax Comm.*, 302 U. S. 90; *Crew Levick Co. v. Pennsylvania*, 245 U. S. 292; *Given, White and Prince vs. Henneford*, 305 U. S. 434. The tax imposed here is self-limited to Louisiana. Numerous decisions,⁵ holding valid state taxes laid upon persons engaged in maritime pursuits and upon maritime instrumentalities attest that it is no impeachment of such a tax that it is laid upon persons engaged in maritime pursuits and upon maritime instrumentalities.

It remains only to consider whether the exception, from the Federal Social Security Act of "officers and crews of vessels" is an expression of the will of congress that such persons so excepted are also to be excepted from provisions of state acts primarily for unemployment compensation. A reading of the act makes it clear that such an intent is not to be found in the express language of the exception and that if it is to be found in the statute at all, it must be by an implication based on the conclusion that the Federal Social [fol. 61] Security act was intended to, and did, set a pattern for state unemployment acts from which they could not vary. We think that the history of the passage of the federal act, what has been written and said about it, and the state acts, *Stewart Machine Co. vs. Davis*, *supra*, *Unemployment Compensation Comm. vs. Jefferson Standard Life*

⁵ *Cornell Steamboat Co. v. Sohmer*, 235 U. S. 549; *Old Dominion S. S. Co. vs. Virginia*, *supra*; *Huse v. Glover*, 119 U. S. 543; *Sands vs. Manistee River Impr. Co.*, 123 U. S. 288.

Ins. Co., 2 S. E. 584, and the structure and contents of the several state acts give rise to an exactly opposite conclusion. That congress could have provided an unemployment compensation system with respect to officers and crews of vessels and have excluded the states wholly from that field may not be doubted. Cf. *O'Donnell, Petitioner, vs. Great Lakes Dredge & Dry Dock Co.*, — U. S. —, Feb. 1, 1943. Whether it could have excluded the states from making provision for unemployment compensation with respect to employees in those occupations without at the same time making affirmative federal provision for them, we need not inquire, for it did not in this case undertake to do that. Neither need we speculate upon the considerations which induced the writing into the federal act of the numerous exceptions it contains. It is sufficient for us to determine whether the presence there of the exception as to officers and crews of vessels operates in any way to impair or restrict the power of the states to lay their unemployment compensation taxes on employments coming within that exception. Appellants, pointing to the fact that as to many of the exceptions congress has by later enactments expressly conferred authority on the states to apply their unemployment compensation laws to classes of employment originally excepted but has not done so as to officers or members of the crews of vessels, insists that this is the strongest kind of proof that the exception was intended to be, and was, exempted not only as to congressional, but to state, taxes as well. We do not think so. The power of a state to tax, as well as its power to govern men and things, will not be lightly stricken down by implication. It may not be doubted [fol. 62] that the state of the authorities is such that there is much confusion to the casual, and no little to the careful, reader of them as to when there is and when there is not such conflict between state and federal regulations of the same subject matter as to exclude a state from a field. This confusion is grounded in and springs in part from the failure of some of the opinions to clearly apprehend and point out the differentiating facts in each situation. It is grounded in part, too, in the failure to draw clearly enough the distinction between those cases where a complainant, subjected to federal regulation of some kind, is attempting to magnify and enlarge the actual scope of the federal law to use it as a shield against, or a cat's paw to draw his chestnuts from the fire as to, state legislation and those

where confronted with positively inconsistent and conflicting state and federal laws and ordered but unable to comply with both, complainant, because of that inability, invokes the paramount protection of the federal laws. Cf. *Cloverleaf Butter Co. v. Patterson*, 116 Fed. (2) 227, 313 U. S. 551. The same considerations but to a far less extent have operated to confuse in the field of taxation. Cf. *Western Live Stock Co. v. Bureau*, 303 U. S. 250. The federal statute invoked here as a limitation upon state power, either in itself or in the history of its enactment, does not, nor do the enactments of the several states, afford apparent basis for a finding that in exempting officers and crews of vessels from the taxing provisions of the federal act, the congress intended to deprive the persons thus excepted from the protection of state unemployment acts, with the result of leaving such employees wholly unprotected by either state or federal law. With the New York Court of Appeals and the [fol. 63] Supreme Court of New Jersey,* which have declined to treat this very exception as a prohibition on state action, we are not inclined to invent one. The judgment was right. It is

Affirmed.

* *Cassaretakis*, Claim of, 44 N. E. (2d) 391; *Shore Fisheries vs. Board of Review*, 127 N. J. L. 87, 21 Atl. (2) 634. Cf. *Capitol Bldg. & Loan Ass'n vs. Kansas Comm.*, 148 Kans. 466, 83 Pac. (2) 106; *Fidelity-Philadelphia Trust Co. v. Hines*, 10 Atl. (2) 553; *Jefferson Standard Life Ins. Co. vs. North Carolina Unemployment Compensation Comm.*, 215 N. C. 479, 2 S. E. (2) 584; *Ctf. 8 George Washington Law Review*, 990.

[fol. 64]

JUDGMENT

Extract from the Minutes of February 11, 1943

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, ET AL.,

vs.

PHILIP J. CHARLET, Administrator, Division of Employment Security, Louisiana Department of Labor, (C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, Substituted in the Place and Stead of Philip J. Charlet).

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Great Lakes Dredge & Dock Company, and others, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 65] UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 10,290

GREAT LAKES DREDGE & DOCK COMPANY, ET AL., Appellants,

versus

PHILIP J. CHARLET, Administrator, Division of Employment Security, Louisiana Department of Labor, Appellee

MOTION AND ORDER STAYING MANDATE—Filed March 5, 1943

Comes now the appellants above named, and respectfully move this Honorable Court to stay the mandate in the above entitled action and not permit the same to be issued out of said cause for a period of thirty (30) days from the date

hereof, on the ground and for the reason that appellants expect and intend, in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America, by petition for a review, on writ of certiorari, of the decision and judgment rendered in favor of appellee and against appellants in the above entitled cause, and:

Appellants further show to the Court that they are ready, able and willing to make a good and sufficient bond, on conditions as provided by law, in said cause.

Wherefore, appellants pray that the Court make and enter an appropriate order herein staying the issuance of the mandate in the above entitled action for a period of thirty (30) days, and that the Court fix the amount of the bond required of appellants, and that they be given reasonable time in which to make, execute and file said bond.

(Signed) James J. Morrison, Attorney for Appellants.

I, James J. Morrison, do hereby certify that a copy of the above motion has been served on appellee by mailing a copy thereof to counsel of record on this, the 5th day of March, 1943.

(Signed) James J. Morrison.

[fol. 66] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH DISTRICT

No. 10290

GREAT LAKES DREDGE & DOCK COMPANY, ET AL., Appellants
versus

PHILIP J. CHARLET, Administrator, Division of Employment Security, Louisiana Department of Labor (C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, substituted in the place and stead of Philip J. Charlet), Appellee

On Consideration of the Application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of

the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 5th day of March, 1943.

(Signed) Leon McCord, United States Circuit Judge.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 849

ORDER ALLOWING CERTIORARI—Filed April 5, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following No. 813. Counsel are requested to discuss in their briefs and on the oral argument the question whether the declaratory judgment procedure can be appropriately used in this case where the complaint seeks a judgment against a state officer to prevent enforcement of a state statute.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.